

But whether the person here referred to, and the Mr. Wilson mentioned in these proceedings, is one and the same person, does not appear, nor am I prepared to say, (assuming them to be the same,) that the question presented by these petitions would be materially affected by it, though I cannot help thinking the circumstance of such declaration being made by the testator should have induced the person indicated to be cautious how he dealt with the property.

The question, however, is, had Henry Robinson such an estate in the real property mentioned in this will as enabled him to part with the absolute title in fee? If he had, the sale to Mr. Wilson must stand, and the prayer of his petition be gratified. If he had not, Mr. Wilson must take the consequences of dealing with a person who had no right to sell.

It is very clear, I think, that the testator did not intend to confer any such power on this devisee. Rea, the trustee, was directed to rent the estate out, and to pay the rents and profits received by him, annually, to the order of Henry, attested by a justice of the peace. So far from authorizing the *cestui que trusts* to sell the estate, the power which by the will was given to the trustee to sell, with the concurrence of the parties interested being of full age, and to invest the proceeds upon similar trusts was revoked by the codicil, and a desire expressed that no part of the real estate should be sold. The tenth clause of the will furnishes pregnant evidence that the testator never contemplated conferring upon any of the *cestui que trusts* the power of sale. It declares that immediately after the decease of any of the legatees, or *cestui que trusts*, Rea, the trustee, shall pay over whatever property he shall then hold in that capacity to the legal representatives and heirs at law of the deceased, unless the deceased shall make some other appointment by his last will and testament, executed according to law.

The testator then manifestly intended that the object of his bounty should receive from the hands of his trustee the rents and profits of the lands during their respective lives, with the power of appointing by will, who should receive whatever should remain in the hands of the trustee at the time of their